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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1986

Addendum

JAMAICA*

[6 January 1997]

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* For the initial report submitted by the Government of Jamaica, see CCPR/C/1/Add.53; for its consideration by the Committee, see CCPR/C/SR.291, SR.292 and SR.296 and Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), paras. 253-290.

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Article 1

Paragraph 1

1. Jamaica is firmly committed to the principle of self-determination and has supported all the resolutions of the General Assembly of the United Nations and the Organization of American States which affirm the right of self-determination of all peoples. In particular, Jamaica actively, by way of financial and other contributions, supported the struggle of the people of Southern Africa for self-determination.

2. In Jamaica itself, the democratic political process ensures that the people of Jamaica have the right to freely determine and pursue the political and economic system of their choice. This right is ensured by constitutional provisions which guarantee the right to vote and to be elected. The right to vote is guaranteed by section 37 (1) of the Constitution, and the right to be elected is guaranteed by section 39 of the Constitution.

Paragraph 2

3. Jamaica has supported all resolutions of the General Assembly of the United Nations which affirm the right of peoples to permanent sovereignty over their natural resources.

Article 2

Paragraph 1

4. This provides for the enjoyment by all persons of the rights recognized in the Covenant without distinction of any kind.

5. The right of the individual to protection against discrimination, whether racial or otherwise, is entrenched in the Constitution in section 24. Attention is also drawn to the provisions of sections 13 and 24 of the Constitution:

(a) Section 13 provides:

"Whereas every person in Jamaica is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely:

"(a) life, liberty, security of the person, the enjoyment of property and the protection of the law;

"(b) freedom of conscience, of expression and of peaceful assembly and association; and

"(c) respect for his private and family life,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."

(b) Section 24 provides:

"(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision which is discriminatory either of itself or in its effect.

"(2) Subject to the provision of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public authority.

"(3) In this section, the expression 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which person of another such description are not made subject or any accorded privileges or advantages which are not accorded to persons of another such description."

6. Exceptions to the provisions of the subsections are, inter alia:

(a) Persons who are not citizens of Jamaica;

(b) Laws regarding qualification for public service, the police force and the defence force;

(c) Restrictions on the rights and freedoms guaranteed by certain sections of the Constitution, and restrictions authorized by other sections of the Constitution in the interest of such matters as defence, public health and national security;

(d) Measures taken during a period of public emergency.

Article 3

7. The civil and political rights set forth in the Covenant are enjoyed equally by men and women. Legislation addressing the rights of the individual, for example in the workplace, deals with the principle of gender equality.

8. In the delivery of health care, there is no sex discrimination. Indeed, organization of the maternal, child health and family planning services provide ample opportunity for women to be fully involved in decision-making about their own health care, as well as those of their family and their community.

9. Consideration has also been given to amending section 24 (3) of the Constitution to prohibit discrimination on the basis of gender. This would be part of an extensive exercise of constitutional reform.

10. In recognition of the fact that the empowerment and advancement of women require further development, the Government of Jamaica is committed to the participation of women in national development planning in the social, political and economic sectors and to the ultimate creation of a gender-neutral society.

11. In addressing the concerns of women, a Legal Reform Committee was established to carry out research and advise particularly on legal issues relating to women. The activities of this Committee led to the enactment of and amendment to specific legislation designed to improve the position of women in the society and to better enable them to enjoy these rights. This legislative effort includes the passing of the following Acts:

(a) Inheritance (Family Provisions) Act: This allows persons who were financially dependent on a testator, but who were excluded from benefiting under the will, to apply to the court for maintenance from the estate. The Act can be of assistance to wives and common-law spouses who may have been financially dependent on a husband but who were not provided for under the will of the husband;

(b) Intestate Estate and Property Charges Act: This allows a common-law wife to benefit from the estate of a husband if he died intestate;

(c) Domestic Violence Act: This protects both men and women from domestic violence. It allows, for example, the granting of exclusion orders to prevent the abuser from disturbing the complainant at home or work.

12. Progress has also been made in reviewing and updating the Naticnal Policy on Women to better reflect the needs of women. The advancement of women in Jamaica has mainly been promoted through a National Five-Year Development Plan (1990-1995), which dealt with the priorities of education and training, entrepreneurial activities, industrial relations and support services, housing, health and legal reform.

13. To promote positive and respectful attitudes towards women in the society, the Government has sponsored symposiums with representatives of the print and electronic media, aimed at promoting a balanced and non-stereotypical portrayal of women in the media. Women have also been sensitized, through Government-sponsored seminars and workshops, to their rights and Jamaica's obligations and commitments under international conventions and agreements to which Jamaica is a signatory. While women represent about 50 per cent of the population, only 10 per cent reach the highest level of decision-making in politics and business. This is, however, consistent with the international average. Notwithstanding this, Jamaican women have strong leadership roles in community organizations, the public sector, and to lesser extent in the private sector. Proposals to improve women's involvement in these sectors include the establishment of a Cabinet subcommittee to be responsible for educational training and economic empowerment.

14. Women make up 46 per cent of the labour force, and are mainly employed in the low-wage sectors (low-paying clerical, sales and service occupations). Strategies to address women's working conditions and salaries include the reorganization of the Employment Bureau of the Ministry of Labour to facilitate training and the revision of wage guidelines.

15. The Government has recognized that violence against women is an obstacle to the achievement of gender equality and the advancement of women. Steps taken to address this problem include the establishment of a Sexual Offences Unit in 1992, a Women's Crisis Centre, and increased public education and training.

16. Jamaica is a signatory to other conventions relating to the rights and advancement of women. These are the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Political Rights of Women; and the Convention on the Nationality of Married Women.

Article 4

17. This article provides for the derogation from the rights recognized in the Covenant during a time of "public emergency" which threatens the life of the nation and the existence of which is officially proclaimed.

18. The circumstances under which a state of emergency can exist are set out in section 26 (4) of the Constitution. There are three such situations:

(a) When Jamaica is at war;

(b) When the Governor-General has declared that a state of public emergency exists; and

(c) When a resolution is in force in each House, supported by a majority of all the members of that House declaring that democratic institutions in Jamaica are threatened by subversion.

19. To be valid the proclamation by the Governor-General must declare that he is satisfied that either:

(a) A public emergency has arisen because of the imminence of a war between Jamaica and a foreign State or the occurrence of a natural disaster; or

(b) That there is an actual or potential threat by a person or persons on a major scale to endanger public safety or to deprive the community or a substantial portion thereof of supplies or services essential to life.

20. During a state of emergency, the Governor-General is empowered under the Emergency Powers Act to make regulations for securing the essentials of life to the community. This includes the power to make provisions for the payment of compensation and remuneration to persons affected by the state of emergency. Regulations must be laid before the Senate and the House of

Representatives and they remain valid for a period of seven days from the date when they were laid before the House unless a resolution is passed by each House extending the life of the Regulation.

21. The Emergency Powers Act provides:

Section 3: "(1) During a period of public emergency, it shall be lawful for the Governor-General, by order, to make Regulations for securing the essentials of life to the community, and those Regulations may confer or impose on any department or any person in Her Majesty's Service or acting on Her Majesty's behalf such powers and duties as the Governor-General may deem necessary or expedient for the preservation of the peace, for securing and regulating the supply and distribution of food, water, fuel, light and other necessities, for maintaining the means of transit or locomotion, and any other purposes essential to the public safety and the life of the community, and may make such provisions incidental to the powers aforesaid as may appear to the Governor-General to be required from making the exercise of those powers effective.

"(2) Without prejudice to the generality of the powers conferred by subsection (1), such Regulations may so far as appears to the Governor-General to be necessary or expedient for any of the purposes mentioned in that subsection:

(a) make provision for the detention of persons and the deportation and exclusion of persons from Jamaica;

(b) authorize on behalf of Her Majesty:

(i) the taking of possession or control or the managing or carrying or, as the case may be, of any property other than land;

(ii) the acquisition of any property other than land;

(c) authorize the entering and search of any premises;

(d) provide for amending any enactment, for suspending the operation of any enactment, and for applying any enactment with or without modification;

(e) provide for charging, in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of Regulations, such fee as may be

(f) prescribed by or under the Regulations.

"Provided that nothing in this Act shall be construed to authorize the making of any Regulations imposing any form of compulsory military service or industrial conscription, or providing for the trial of persons by Military Courts:

Provided also that no such Regulation shall make it an offence for any person or persons to declare or take part in a lockout or to take part in a strike, or peacefully to persuade any other persons to declare or take part in a lockout or to take part in a strike."

22. Although section 24 (4) (c) exceptionally authorizes the enactment of discriminatory legislation during a period of public emergency, there is no instance of any such legislation having been enacted during the state of emergency which existed in Jamaica in 1976 and 1977.

23. Paragraph 2 of article 4 provides that there may be no derogation from the following articles under the provisions of paragraph 1:

Article 6 - right to life;

Article 7 - prohibition against torture;

Article 8 (1) - prohibition against slavery;

Article 8 (2) - prohibition against servitude;

Article 11 - prohibition against imprisonment for inability to fulfil a contractual obligation;

Article 15 - prohibition against conviction for an act which was not an offence at the time of its commission;

Article 16 - right to recognition as a person;

Article 18 - right to freedom of thought.

24. The Constitution allows derogation from the following sections during the state of emergency:

Section 15 (5) - protection from arbitrary arrest;

Section 20 (9) - right to fair trial;

Section 24 (4) - freedom from discrimination.

Article 5

25. No comment under this article.

Article 6

Paragraph 1

26. This right is protected by section 14 (1) of the Constitution which provides: "No person shall intentionally be deprived of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted".

Paragraph 2

27. The death penalty applies in Jamaica and may be imposed only in the case of murder and high treason.

28. The Offences Against the Persons Act (Amendment) 1992 divides the offence of murder into two categories: capital and non-capital murder. The categories of capital murder which attract the death penalty are provided for in section 2 (1)-(2) of the Act:

"Capital murder. 2-(1) Subject to subsection (2), murder committed in the following circumstances is capital murder, that is to say -

"(a) the murder of -

(i) a member of security forces acting in the execution of his duties or of a person assisting a member so acting;

(ii) a correctional officer acting in the execution of his duties or of a person assisting a correctional officer so acting;

(iii) a judicial officer acting in the execution of his duties; or

(iv) any person acting in the execution of his duties, being a person, who, for the purpose of carrying out those duties, is vested under the provisions of any law in force for the time being with the same powers, authorities and privileges as are given by law to members of the Jamaica Constabulary Force, or the murder of any such member of the security forces, correctional officer, judicial officer or person of any reason directly attributable to the nature of his occupation;

"(b) the murder of any person for any reason directly attributable to -

(i) the status of that person as a witness or a party in a pending or concluded civil case or matter or in any criminal proceedings; or

(ii) the service or past service of that person as a juror in any criminal trial;

"(c) the murder of a Justice of the Peace acting in the execution of his judicial functions;

"(d) any murder committed by a person in the course or furtherance of -

(i) robbery;

(ii) burglary or housebreaking;

(iii) arson in relation to a dwelling house; or

(iv) any sexual offence;

"(e) any murder committed pursuant to any arrangement whereby money or anything of value -

(i) passes or is intended to pass from one person to another or to a third party at the request or direction of another person; or

(ii) is promised by one person to another or to a third person at the request or direction of that person, as consideration for that other person causing or assisting in causing the death of any person or counselling or procuring any person to do any act causing or assisting in causing that death;

"(f) any murder committed by a person in the course or furtherance of an act of terrorism, that is to say, an act involving the use of violence by that person which, by reason of its nature and extent, is calculated to create a state of fear in the public or any section of the public."

29. If, in the case of capital murder, two or more persons are guilty of that murder, it shall be capital murder in the case of any of them who by his own act caused the death of, or inflicted or attempted to inflict grievous bodily harm on, the person murdered, or who himself used violence on that person in the course or furtherance of an attack on that person; but the murder shall not be capital murder in the case of any other of the persons guilty of it.

30. Murder not falling within subsection (1) is non-capital murder. Where it is alleged that a person accused of murder is guilty of capital murder, the offence shall be charged as capital murder in the indictment.

31. The passing of this legislation, together with the decision in Pratt and Morgan v. Attorney-General - Jamaica, has resulted in the commutation of the sentences of many death row inmates.

Paragraph 4

32. As to the provisions of this paragraph the Constitution provides as follows:

Section 90 "(1): The Governor-General may, in Her Majesty's name and on Her Majesty's behalf:

(a) grant to any person convicted of any offence against the law of Jamaica a pardon, either free or subject to lawful conditions;

(b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for such an offence;

(c) substitute a less severe form of punishment for that imposed on any person for such an offence; or

(d) remit the whole or part of any punishment imposed on any person for such an offence or any penalty or forfeiture otherwise due to the Crown on account of such an offence.

"(2): In the exercise of the powers conferred on him by this section the Governor-General shall act on the recommendation of the Privy Council."

Paragraph 5

33. The execution of juveniles is prohibited by section 29 (1) of the Juveniles Act:

"Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the Court that at the time when the offence was committed he was under the age of eighteen years, but in place thereof the Court shall sentence him to be detained during Her Majesty's pleasure, and, if so sentenced, he shall, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place (including, save in the case of a child, an adult correctional centre) and under such conditions as the Minister may direct, and while so detained shall be deemed to be in legal custody."

34. While the execution of pregnant women is barred by section 3 (2) of the Offences Against the Person Act that legislation provides: "Where a woman convicted of an offence punishable with death is found in accordance with the provisions of this to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment with or without hard labour for life instead of sentence of death". It should be noted that during this century, a tradition has arisen whereby women are not executed; instead their sentences are commuted to life imprisonment.

Paragraph 6

35. The question of the abolition of capital punishment has been considered by a Committee of Parliament. It was decided to reduce the types of murder which would attract the death penalty. This decision is reflected in the Offences Against the Persons (Amendment) Act 1992.

Article 7

36. As regards the provisions of this article, section 17 (1) of the Constitution provides: "No person shall be subjected to torture or to inhuman or degrading punishment or other treatment".

37. At common law any infringement of the right of safety and freedom of the person is a trespass to the person and is actionable in criminal and civil law. This common-law protection is available to all citizens and can easily be utilized. In addition, the rules for the Jamaica Constabulary and the rules for prison officers offer further protection.

Rules

38. Rule 522 for the Jamaica Constabulary provides:

> "Prisoners shall be treated by the Constabulary with every consideration, and while no harshness or unnecessary restraint shall be used towards them, every precaution must be taken as regards their safe custody". In addition, the establishment of the Police Complaints Authority provides another avenue for citizens who believe that they have been abused by police officers. Such citizens may make a complaint to the Authority and have the matter investigated. Where necessary, appropriate action may be taken against the officers".

39. Rule 156 provides:

> "Every prison officer and member of his subordinate staff shall treat prisoners with kindness and humanity and shall listen patiently to, and report their complaints and grievance at the same time being firm in maintaining order and discipline and enforcing observances of these Rules".

40. From this, it will be noted that not only is torture and cruel treatment proscribed, but that there is also a positive requirement that prisoners not be treated harshly. Where the allegations are proven, this will attract disciplinary sanctions and the application of the criminal law on the advice of the Director of Public Prosecutions. A claim for compensation for assault will also be available.

Article 8

41. With reference to paragraphs 1 and 2, slavery and servitude are prohibited in Jamaica. Section 12 of the Slavery Abolition Act 1833, which is a statute of the United Kingdom applicable in Jamaica provides:

> "...all and every person who on the said first day of August one Thousand eight hundred thirty-four shall be holden in slavery within any such British colony as aforesaid, shall upon and from and after the said first day of August one thousand eight hundred and thirty-four become and be to all intents and purposes free and discharged of and from all manner, of slavery, and shall be absolutely and forever manumitted and the children thereafter to be born to any such person,

and the offspring of such children shall in like manner be free from their birth and slavery shall be and is hereby utterly and forever abolished and declared unlawful throughout the British colonies, plantations and possessions abroad."

Jamaica is also a party to the Slavery Convention 1926 which was amended by the 1953 Protocol.

42. As regards the provision of paragraph 3, there is no legislation in existence which prohibits forced labour. However, forced labour is not practised in Jamaica as such a practice would be rejugnant to the society. Certainly if such labour existed in Jamaica and was achieved through threats or force, the criminal offence of assault would have been committed.

Article 9

Paragraph 2

43. The Constitution provides for the right of liberty and security of the person in section 15 (1):

"15 (1) No person shall be deprived of his personal liberty save as may and in any of the following cases be authorized by law -

(a) in consequence of his unfitness to plead to a criminal charge; or

(b) in execution of the sentence or order of a court, whether in Jamaica or elsewhere, in respect of a criminal offence of which he has been convicted; or

(c) in execution of an order of the Supreme Court or of the Court of Appeal or such other court as may be prescribed by Parliament on the grounds of his contempt of any such court or of another court or tribunal; or

(d) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him by law; or

(e) for the purpose of bringing him before a court in execution of the order of a court; or

(f) upon reasonable suspicion of his having committed or of being about to commit a criminal offence; or

(g) in the case of a person who has not attained the age of 21 years, for the purpose of his eduction or welfare; or

(h) for the purpose of preventing the spread of an infectious or contagious disease; or

(i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; or

(j) for the purpose of preventing the unlawful entry of that person into Jamaica, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Jamaica or the taking of proceedings relating thereto; or

(k) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Jamaica or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Jamaica in which, in consequence of any such order, his presence would otherwise be unlawful."

Paragraph 2

44. This provision is contained in section 15 (2) in almost identical language.

Paragraph 3

45. This provision is similar to one contained in section 15 (3) of the Constitution.

Paragraph 4

46. The legality of any such detention under Jamaican law may be challenged by an application to a court for a writ of habeas corpus ad subjiciendum (a writ of habeas corpus).

47. As a general rule, persons awaiting trial are released on bail, and not held in custody. However, in special circumstances, e.g., where the release of the person would jeopardize the safety of others or where there is a risk of flight, the person will be held in custody.

48. Section 23 of the Constabulary Force Act which deals with the procedure after the arrest of a person by a member of the Force provides:

"When any person shall be apprehended by any member of the force, such person shall be taken to a Police Station or lock-up and it shall be lawful for any Officer, Sub-Officer of the said Force in charge of the Police Station or lock-up, to take bail by recognizance, with or without security, for the appearance of any such person before any court of competent jurisdiction on a day to be mentioned in the said recognizance to be dealt with according to law; and upon the offender refusing to give such recognizance, or being unable to find such security, it shall be lawful for such Officer, or Sub-Officer, to detain such offender in

custody until he can be brought before a Justice and dealt with in like manner as is directed in the case of a person apprehended under this Act without warrant".

49. Section 25 of the Constabulary Force Act, which deals with the situation where bail is declined, provides:

"If any Officer of Sub-Officer in charge of a Police Station or lock-up shall decline or refuse to take bail by recognizance as aforesaid, from any person in his custody and such person shall so require, it shall be the duty of such Officer or Sub-Officer in charge of the Police Station or lock up forthwith after being so required, to take or cause to be taken, such person before some Justice conveniently near, for the purpose of having such person dealt with by such Justice according to law; and all recognizances taken before any Justice for the appearance of persons apprehended without warrant shall be taken without fee or reward by any Justice or other person whatever."

Paragraph 5

50. Where an individual has been arrested and not brought promptly before a magistrate and is thereafter either released or acquitted, a civil action may lie against the State. If successful, the amount of damages awarded takes into account all relevant factors. This remedy is easily available and can be readily utilized. Poverty is not a bar to the utilization of this remedy because cases are usually handled on a contingency basis.

Article 10

51. This principle of respect for the inherent dignity of all persons including those deprived of their liberty is accepted and given effect through the various provisions, for example, the Prisons Act and the Jamaica Constabulary Forces Act.

Paragraph 2 (a)

52. The Prisons Act, section 29 (3), gives effect to the provisions of this paragraph:

"29 (1) Separate provision shall be made for the detention of:

(a) male and female prisoners, and no male prisoner shall be detained in the same part of any prison as any female prisoner;

(b) civil and criminal prisoners, and no civil prisoner shall be detained in the same part of any prison as any criminal prisoner;

(c) young prisoners, and no young prisoners shall be detained in the same part of any prison as any other prisoner;

(d) prisoners sentenced to preventive detention under Section 54 of the Criminal Justice (Administration Act) and as far as possible no prisoner sentenced to preventive detention shall be detained in the same part of any prison as any other prisoner;

(e) person awaiting trial or remanded in custody, and as far as possible no person awaiting trial or so remanded shall be detained in the same part of any prison as any other prisoner".

53. With respect to subparagraph (d), these are persons who have been found to be habitual criminals or persons who habitually lead a dishonest or criminal life.

54. Jamaica operates seven Adult Correctional Centres; six for male offenders and one for female offenders. Disturbances have occurred most frequently in one of the maximum security centres, namely the St. Catherine Adult Correctional Centre. This centre houses men who are under the sentence of death, and also other inmates of high-security rating. These two categories of inmate are the ones who are usually involved in disturbances. The atmosphere at this centre has been more cordial, however, since the reduction of the population of the death row inmates due to a reclassification process which commuted their sentences of death to that of life imprisonment.

55. The system has mechanisms to deal with any action against inmates which could be deemed as abuse. The inmates have the right to lodge a complaint to the Parliamentary Ombudsman without the intervention of the respective centre. The superintendents at the centres are required to investigate all incidents. Where the police need to investigate as well, they are duly notified. There is also an Inspectorate Unit at the Ministry of National Security and Justice that conducts investigations into incidents which occur at the centres. The Inspectorate has produced several impartial reports highlighting the difficulties in the prison system. Some of the reports have confirmed allegations of ill-treatment made by prisoners and have led to recommendations that prisoners be compensated. One such report was done on 26 March 1993.

56. Culpable officers are dealt with by the Department preferring charges in the following ways:

(a) They can be warned and fined up to a maximum of 15 per cent of their salaries. Those outside the Department's jurisdiction are referred to the Offices of the Services Commissions for disciplinary proceedings to be instituted. This can lead to dismissal;

(b) They can also be charged criminally by the police and dealt with through the courts.

57. Submissions from the Superintendents of St. Catherine and Tower Street Correctional Centres where disturbances have occurred were examined and collated accordingly.

58. The following disturbances occurred at the St. Catherine Adult Correctional Centre:

(a) On 3 January 1988, two warders, L. Richard and E. Adams, were held hostage by condemned inmates. They were released unharmed later the same day;

(b) On 9 September 1989, inmates, including those on the condemned section, rebelled. Temporary warder Alfred Williams, who was at the time a trainee warder, was stabbed. Condemned inmate Philip Leslie received injuries and was hospitalized. The police and the military were called in to assist in putting down the disturbance. Leslie died in the Kingston Public Hospital on 10 September 1989. Staff warder H. Parchment, senior warder V. McDermott and warder D. Blagrove were indicted for the murder of inmate Leslie in 1992. The officers were freed of the charge on 3 October 1995 in the Circuit Court, Kingston;

(c) On 28 May 1990 condemned inmates rioted as a result of staff taking industrial action. The police, the army and the fire brigade were called in to quell the disturbance. Correctional officers C. Murray, P. Burgess, N. Ingram, N. Austin and D. Coore were injured. Inmate Michael Freemantle was also injured, and inmates D. Wilson and C. Green died in the Spanish Town hospital as a result of their injuries. The Director of Public Prosecutions (D.P.P.) ruled that no officer by charged;

(d) On 30 May 1991, disturbances erupted at South Block during which correctional officers B. Forbes, M. Clarke, J. Turner and H. Deon were injured. Inmates D. Smith, E. Osbourne and P. Robinson were also injured in the disturbance. The police and the military assisted in restoring calm;

(e) On 30 June 1991, there was a disturbance amongst inmates living in New Hall. This resulted in the deaths of inmates B. Heslop, B. Burnette and L. Duncan. The revolt emanated from the stabbing to death of inmate Paul Whyte by another inmate, F. Irving. In retaliation for Mr. Whyte's death his friends set sponges and other inflammable materials on fire. Soldiers who were stationed at the institution helped officers to restore calm. Four inmates were later arrested for murder by the Spanish Town Criminal Investigation Branch (C.I.B.);

(f) On 27 December 1992, convicted inmates began fighting among themselves. This resulted in inmates Leroy Perry, Delroy Kean and Curtis Lambert being seriously injured and hospitalized. The police had to be called in to assist staff to gain control;

(g) On 30 October 1993, condemned inmates at Gibraltar held warders hostage when their cells were being opened for them to be fed. During the mêlée, warder D. Lattibeaudiere's throat was cut, and warders S. Smith and A. Reid were held hostage and injured. Inmates R. Burrel, N. Neath, A. Morrison and R. Joseph were shot and killed by warders. The Spanish Town C.I.B. visited and carried out investigations into the incident;

(h) On 1 January 1994, condemned inmate D. Simmonds attacked warders with stones. Warders D. Warren and M. Broomfield received injuries during the

attack, were treated and discharged from the Spanish Town hospital. Simmonds and other inmates were also treated at the hospital. The Spanish Town police visited and carried out investigations;

(i) On 13 June 1994, inmates from New Hall created havoc by throwing stones and other missiles at members of staff; they invaded the kitchen, destroying various items by looting the storeroom. The police had to be called in to restore order. There were no casualties;

(j) On 28 February 1995, inmates rioted because they were upset about security matters which were being addressed. During this disturbance, they tore down portions of the metal fencing, uprooted pipes, and attacked members of staff with missiles and other life-threatening weapons. During this uprising, inmate Prince Clarke was shot and killed by staff. Three warders sustained injuries, one of whom was corporal C. Williamson, who was held hostage. The Spanish Town police were called in to assist members of staff to restore order and to investigate the matter.

59. The following incidents occurred at the Tower Street Adult Correctional Centre:

(a) On 9 November 1985, a large number of correctional officers reported sick. They were protesting poor working conditions and long working hours. The following day, more officers reported sick, and thus police and soldiers were called in to assist the skeleton staff. Inmates took advantage of the low staff turnout and rioted. They broke off the gate to the main stores, looted bundles of uniform materials, foodstuffs and sanitation articles. Many of the items were thrown over the wall; others were strewn all over the prison property. Inmates tried to set the stores, kitchen and bakery on fire, but this was quickly averted by the security personnel. As the situation deteriorated, staff members who had reported sick were instructed by their union to return to work, which they did. Things were brought under control, but millions of dollars in damage was done. Two officers were charged departmentally regarding this incident;

(b) On 12 September 1988, the same day Hurricane Gilbert hit Jamaica, inmates started a rampage, refused to eat their meals, destroyed government property, refused to go into their cells, and set several cells on fire. The matter was subsequently brought under control. Inmate Everton Allen lost his life during this incident. The police were called in to investigate the matter;

(c) In July 1989, remanded inmates protested over the long delay of trials and appeals. They refused to eat and demanded to see the Minister of National Security and Justice. When their request was not granted, the inmates stoned officers, and closed one of the main gates to two of the remand blocks. With the help of the police, the matter was brought under control. One prisoner died and correctional officers Howard Thomas and Ricardo Grant were shot and injured;

(d) In 1992 a fire broke out in the cell of an inmate, Jim Brown, who was facing extradition charges. The inmate suffered burns and was rushed to the Kingston public hospital where he subsequently died. The police and army

were called in and assisted in bringing matters under control. The matter was investigated by the police. Inmates damaged several cells, prisoners' records and photographic equipment, among other things. Experts were brought in from Canada, but were unable to determine the cause of the fire. The officer on night duty at the time of the fire was summoned to court at the inquiry. The inquiry found that no one was criminally responsible and the incident was labelled "death by misadventure".

Paragraph 2 (b)

60. As regards the provisions of this paragraph, section 17 of the Juveniles Act provides:

> "Arrangements shall be made by the Commissioner of Police for preventing a juvenile while detained in a police station, or while being conveyed to or from any criminal court, or while waiting before or after attendance in any criminal court, from associating with any adult, not being a relative, who is charged with any offence other than an offence with which the juvenile is jointly charged".

61. The usual practice is to hold juvenile offenders in separate institutions called "places of safety". Detention in a police station is a temporary measure pending the availability of transportation and/or accommodation in a place of safety. It is a principle of the courts in Jamaica that accused persons, whether juveniles or adults, should be bought to trial as speedily as possible.

Paragraph 3

62. The essential aim of the treatment of prisoners is their reformation and social rehabilitation.

63. Juvenile offenders are segregated from adults and accorded treatment appropriate to their age and legal status, the main aim of which is to reform while equipping them with the skills to become productive citizens on their departure from the institution. The whole question of the treatment of juveniles is dealt with in the Juveniles Act.

64. Increasingly over the years, the rehabilitation aspect has been gaining emphasis as regards the treatment of prisoners. In practice provisions are made for literacy programmes, vocational skills and academic teaching.

65. It should be noted too that in 1978 the Parole Act was passed enabling prisoners to apply for parole after a particular period and thus to serve a portion of their sentence on a non-custodial basis.

66. Also passed was the Criminal Justice (Reform) Act, 1978 which increases the sentencing options open to the court once an offender has been convicted. Such options including suspended sentences, community service orders, sentences to be served at stated times and payment of fines by installments. The reduction of the liability to incarceration plays a strong part in the element to prison rehabilitation. In addition, in order to limit the stigma which may be attached to someone who has already paid his debt to society,

there is legislation which allows records in relation to certain convictions to be expunged after a particular period. This is the Criminal Records (Rehabilitation of Offenders) Act.

Article 11

67. The laws of Jamaica do not allow for a person to be imprisoned merely on the ground of inability to fulfil a contractual obligation. The Debtors Act, for example, provides in section 2 as follows:

> "With the exceptions hereinafter mentioned, no person shall be arrested or imprisoned for making default in payment of a sum of money. There shall be excepted from the operation of this Act: default in payment of a penalty, or sum in the nature of a penalty other than a penalty in respect of any contract ...".

The other exception does not relate to contractual obligation.

Article 12

68. Section 16 of the Constitution provides:

> "(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Jamaica, the right to reside in any part of Jamaica, the right to enter Jamaica and immunity from expulsion from Jamaica.
>
> "(2) Any restriction on a person's freedom of movement which is involved in his lawful detention shall not be held inconsistent with or in contravention of this section."

69. The question of freedom to leave any country including one's own is not specifically provided for in the Constitution. As a matter of practice, however, persons are free to leave Jamaica and Jamaicans are not deprived of the right to enter their own country. Similarly, persons are free to choose their residence. However, there is legislation for monitoring the movements of persons deported to Jamaica after being convicted abroad of serious criminal offences. Under the Criminal Justice (Administration) (Amendments) Act, 1994, this monitoring can only be done upon an order being issued by a judge in chambers. Also, this does not affect the right of the individual to choose his place of residence.

Paragraph 3

70. This is covered in section 16 (3) of the Constitution, which reads:

> "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:
>
> (a) which is reasonably required in the interests of defence, public safety, public order, public morality or public health; ...".

Article 13

71. In looking at the position in Jamaica with regard to the extent to which effect is given to the provisions of this article, it should be noted that all persons who are non-nationals of Jamaica are aliens. Persons who are not nationals of Jamaica may be divided into four categories, one of which is that of "alien". The Jamaican Nationality Act, section 2 (1), and section 26 (2) of the Immigration Restriction (Commonwealth) Citizen Act make provisions for this.

72. The Jamaican Nationality Act, Section 2 (1), provides:

> "In this Act, unless the context otherwise requires - `Alien' means a person who is not a Commonwealth citizen, a British person or a citizen of the Republic of Ireland."

73. Section 26 (2) of the Immigration Restriction (Commonwealth) Citizen Act provides:

> "The Minister may by order declare a Commonwealth citizen who is not a citizen of Jamaica to be an undesirable person where:
>
> (a) he is satisfied that such person is or has been conducting himself so as to be dangerous to the peace, order and good government of Jamaica; or
>
> (b) on other grounds, he considers it in the public interest that an order should be made in relation to such person;
>
> and notwithstanding anything to the contrary in this or any other enactment such person shall thereupon be a prohibited immigrant and the Minister may in the order aforesaid or, as the case may require, a subsequent order direct that he be removed from the Island and in the meantime be detained in custody:
>
> Provided that where an order has been made pursuant to paragraph (b) and the Commonwealth citizen declared an undesirable person has been ordinarily resident in the Island continuously for a period of five years or more immediately prior to the making of the order:
>
> (i) Such person shall have a right to make objection to the advisory tribunal established under Section 27 against any direction aforesaid that he be removed from the Island; but such objection, if any, shall be made in writing within two weeks of the notification referred to in paragraph (ii) and shall specify the grounds of objection and a copy thereof shall be delivered to the Minister within the period aforesaid;

(ii) The Minister shall as soon as may be practicable after directing the removal of such person from the Island notify him as to grounds on which the order was made and of his right to make objection against the direction to the advisory tribunal; and

(iii) If pursuant to paragraph (i) objection has been made by a person to the advisory tribunal, the order directing the removal of such person from the Island shall not be executed until the Minister has received and considered the report of the advisory tribunal in the matter."

74. Section 27 (1) of this Act provides:

"For the purposes of subsection (2) of Section 26, there shall be established an advisory tribunal consisting of:

(a) a person appointed by the Chief Justice from among the persons entitled to practise or to be admitted to practise in Jamaica as barristers or solicitors, who shall be chairman of the tribunal; and

(b) two other persons appointed by the Governor-General."

75. From the foregoing it will be seen that in certain circumstances a non-Jamaican has the right to submit reasons against his being removed from Jamaica and to have his case reviewed. The word "review" is not used here as a term of art and in contradiction to the term "appeal", but in its broad sense as meaning "examine". This is the sense in which it is generally used in this article. It should be noted, however, that there is no express right for the person being removed from Jamaica to be represented before the competent authority.

76. Section 15 (1) of the Aliens Act provides:

"The Minister may, if he thinks fit, in any of the cases mentioned in subsection (6) make an order (in this Act referred to as a deportation order) requiring an alien to leave and to remain thereafter out of the Island."

77. Subsection (6) reads as follows:

"A deportation order may be made in any of the following cases:

(a) If any court certifies to the Minister that the alien has been convicted, whether by that court or by any inferior court from which the alien has been brought by way of, any of the offences specified in the Second Schedule and that the court recommends that a deportation order should be made in his case either in addition to or in lieu of sentence;

(b) If a court certifies to the Minister that the alien has been convicted by that court of an offence under this Act;

(c) If the alien has become a charge on public or parochial funds or if the Mayor or the Kingston and St. Andrew Corporation or the Chairman of a Parish Council or the Commissioner of Police certifies to the Minister that the alien has been found wandering without ostensible means of subsistence or has been living in insanitary conditions due to overcrowding;

(d) If the Minister deems it to be conducive to the public good to make a deportation order against the alien."

78. Subsection 7, which is the only provision dealing with the question of appeal or review, states:

"Where any case in which a court has made a recommendation for deportation is brought by way of appeal against conviction or sentence before a higher court and that court certifies to the Minister that it does not concur in the recommendation, such recommendation shall be of no effect but without prejudice to the power of the Minister to make an order of deportation under paragraph (d) of subsection 6."

79. It will be observed that no general right of appeal against deportation is given by the Act. It is generally considered that an appeal by any alien against deportation lies only in cases where the alien has been convicted of an offence and appeals against conviction of sentence in respect of that offence. It should be noted that under subsection 7 of the Aliens Act even where a court on hearing an appeal against conviction or sentence by an alien does not concur in the recommendation by a lower court that the alien be deported, the power of the Minister to make an order of deportation under subsection (6) (d) is not prejudiced.

Article 14

80. The following constitutional provisions are relevant to this Article:

Section 20 (1):

"Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

"(2) Any court or other authority prescribed by law for the determination of the existence of the extent of civil rights or obligations shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

"(3) All proceedings of every court and proceedings relating to the determination of the existence or the extent of a person's civil rights or obligations before any court or other authority, including the announcement of the decision of the court or other authority, shall be held in public."

Paragraph 1

81. In Jamaica all persons are equal before the courts and tribunals. Accused persons are tried only in their presence. However, there is no right to be present at the hearing of an appeal. Guarantees of judicial independence are found in the Constitution in chapter VII. These include a prohibition on the abolition of the office or a judge of the Supreme Court or Court of Appeal while there is a substantive holder of that office. These provisions are contained in sections 97 (3) and 103 (4) respectively of the Constitution.

82. The grounds on which a judge of the Supreme Court or the Court of Appeal can be removed from office are identical. The two grounds are:

(a) Inability to discharge the functions of the office (whether due to a physical or mental disorder or another cause); or

(b) Inability to understand the English language.

Paragraph 2

83. The requirements of this paragraph are met by section 20 (5) of the Constitution which provides: "Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty". The presumption of innocence is one of the cornerstones of the legal process and is rigorously enforced by the courts.

Paragraph 3

84. As regards this paragraph, the provisions are made in section 20 (6).

"20 (6) Every person who is charged with a criminal offence:

(a) shall be informed as soon as reasonably practicable, in a language which he understands, of the nature of the offence charged;

(b) shall be given adequate time and facilities for the preparation of his defence;

(c) shall be permitted to defend himself in person or by a legal representative of his own choice;

(d) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance of witnesses, subject to the payment of their reasonable expenses, and carry out the examination of such witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(e) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the English language.

Paragraph 3 (a)

85. This provision is guaranteed by section 20 (6) (a) of the Constitution. Complaints have been made of delay in informing persons detained of the charges against them. These complaints are investigated as thoroughly as possible.

Paragraph 3 (b) and (c)

86. Constitutional guarantees for these rights are found in section 20 (6) (b) and (c) respectively. Efforts are constantly being made to speed up the trial and appellate processes given the limited resources available. One sign that these efforts are bearing fruit is the fact that several cases now before the Committee began in 1994 and by 1996 the authors had essentially exhausted domestic remedies and lodged communications before that body.

Paragraph 3 (d)

87. Persons without legal assistance are informed of their right to have legal assistance and if they do not have sufficient means to pay for it, they may be afforded free legal assistance under the relevant legislation. In order to ensure more effective representation to indigent persons and to address existing deficiencies in the legal aid system, a new legal aid act is now being drafted. Some features of this legislation will be the provision of legal aid from the point of arrest and an expansion of the categories of persons who qualify for legal aid to include those of limited means. A new Legal Aid Council has been established to oversee the entire system. Efforts are now being made to recruit staff for the Council.

Paragraph 3 (e)

88. The Constitution guarantees this right under section 20 (6) (d).

Paragraph 3 (f)

89. This right is guaranteed by section 20 (6) (e) of the Constitution.

Paragraph 3 (g)

90. Under the common law privilege against self-incrimination, a person commits no offence by refusing to answer questions put to him by someone who is endeavouring to discover whether and by whom an offence has been committed. An accused person cannot, therefore, be compelled to testify against himself or to confess guilt. This right is also guaranteed by the Constitution.

Paragraph 4

91. As regards the requirements of this paragraph, juvenile persons are dealt with in a manner different from adults and in the light of the desirability of promoting their rehabilitation. The legislative provisions concerning juveniles are to be found in the Juveniles Act.

92. Section 22 (7), (8) (9) of the Juveniles Act provides:

"(7) Where a juvenile is brought before a juvenile court it shall be the duty of such court to explain to him in as simple language as possible the reason for his being before the court.

"(8) Where a juvenile is charged before a juvenile court with any offence it shall be the duty of the court to ascertain the defence, if any, of the juvenile so as to put, or assist the juvenile and his parents or guardian in putting, such questions to any witness as appear to be necessary.

"(9) Where a juvenile is charged with any offence, and admits the offence, or the court is satisfied that the offence has been proved, the court shall record a finding to that effect and before sentencing the juvenile shall obtain such information as to his general conduct, home surroundings, school record, and medical history, as may enable it to deal with the case in the best interest of the juvenile."

93. Section 27 (1) provides:

"Where a juvenile has been found guilty of any offence before a juvenile court, that court may, subject to the provisions of this Act, make an order:

(a) dismissing the case;

(b) being a probation order under the Probation of Offenders Act;

(c) placing the offender, either in addition to or without making any other order under this section for a specified period not exceeding three years under the supervision of a probation officer and after-care officer or some other person to be selected for the purpose by the Minister;

(d) committing the offender to the care of any fit person, whether a relative or not who is willing to undertake the care of him;

(e) where the offender is a young person, ordering the offender to pay a fine, damages or costs;

(f) sending the offender to a juvenile correctional centre;

(g) ordering the parent or guardian of the offender to pay a fine, damages or costs;

(h) ordering the parent or guardian of the offender to enter into a recognizance for the good behaviour of such offender."

94. Section 29 (2) provides:

> "A juvenile shall not be sentenced to imprisonment, whether with or without hard labour, for any offence, or be committed to a correctional centre in default of payment of any fine, damages or costs."

95. Section 30 provides:

> "A court shall not order a child under the age of ten years to be sent to any approved school unless for any reason the court is satisfied that he cannot suitably be dealt with otherwise."

96. Juveniles are dealt with in special courts called juvenile courts. The following provisions, for example, give an indication of the consideration which is given to the age of an offender and the desirability of his rehabilitation.

Paragraph 5

97. As a general principle, everyone convicted of a criminal offence has a right to have his conviction and sentence reviewed by a higher tribunal. There are, however, certain exceptions to this principle. In some cases the sentence for a particular crime is mandatory, and cannot therefore be reviewed or altered.

Paragraph 6

98. The right to seek compensation for injury suffered is a well-established principle in Jamaican law subject to the rules of evidence and civil procedure.

Paragraph 7

99. Section 20 (8) of the Constitution accords with the provisions of this paragraph. That section reads:

> "No person who shows that he has been tried by any competent court for a criminal offence, and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence save upon the order of a superior court made in the course of appeal proceedings relating to the conviction or acquittal; and no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence ..."

100. In keeping with the above-mentioned provision of the Constitution a plea of autrefois acquit is available to someone who claims that he has been tried before and acquitted of the same offence. Also, a plea of autrefois convict is available to an accused person. By this plea the accused person pleads that he has been previously convicted of the same crime of which he is accused.

Article 15

Paragraph 1

101. As regards the first part of this paragraph, section 20 (7) of the Constitution, which provides as under, is applicable:

> "No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed."

Also, the practice is that where subsequent to the commission of an offence provision is made by law for the imposition of a lighter penalty, the offender will be made to benefit thereby.

Paragraph 2

102. The principle that rules of customary international law are received as part of the common law would, perhaps, be applicable to this paragraph.

Article 16

103. According to the laws of Jamaica everyone has the right to recognition as a person before the law.

Article 17

Paragraph 1

104. The right to privacy of the home and other property is guaranteed by section 19 (1) of the Constitution, which provides:

> "Except with his own consent, no person shall be subject to the search of his person or his property or the entry by others on his premises."

The limits to this protection include any law which has provisions "reasonably required" in the interests of defence, public safety, public order, public morality, public health, public revenue, town and country planning.

105. As regards unlawful interference with one's correspondence section 22 (1) of the Constitution provides:

> "Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his corespondence and other means of communications."

106. Section 6 of the Post Office Act states:

"(1) Wheresoever postal communications are established the Postmaster-General by himself or by the officers of the Post Office, shall have the exclusive privilege of conveying from one place to another within the Island, or into or out of the Island and from or to any place between which and the Island postal communications are established, whether by land or by sea or by air, all letters, except in the following cases, and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, despatching, and delivering all letters, except in the following cases:

(a) letters carried by a private friend on his way, journey or travel, delivery by such friend to the person or persons to whom they are directed without hire, reward, other profit or advantage, for receiving, carrying or delivering them;

(b) letters sent by a messenger on purpose, solely concerning the affairs of the sender or receiver thereof;

(c) process or proceedings issuing out of a Court of Justice;

(d) letters solely concerning goods or other property, sent by land or by sea or by air, to be delivered with the goods or property which such letters concern, without hire, reward, or other profit or advantage, for receiving, carrying or delivering them:

Provided that such letters are open to inspection and have superscribed thereon the words `consignee's letters' or other words to the same effect.

"(2) Nothing herein contained shall authorize any person to make a collection of letters, except as aforesaid, for the purpose of sending them otherwise than by post.

"(3) Subject as aforesaid the following persons are especially forbidden to collect, carry, tender, or deliver letters or receive letters for the purpose of carrying or delivering them, although they shall not receive hire, reward, or other profit or advantage, for so doing:

(a) common carriers of passengers or goods and their drivers, servants or agents, except as regards letters solely concerning goods in their carriages or conveyances, and

(b) owners or masters of contract packets or vessels plying to or from any port or place within the Island, and their servants or agents, except as regards letters solely concerning goods on board, such letters being open to inspection and having the words `consignee's letters' or other words to the same effect superscribed thereon, and

except as regards letters tendered to a master of a contract packet or vessel by an officer of the Post Office for conveyance, or letters received under subsection (3) of Section 28;

(c) passengers or other persons on board of such contract packets or vessels."

107. Rules governing the treatment of prisoners' correspondence are contained in the 1991 Correctional Institutional Rules. Rule 16 (1) provides:

"(a) Every inmate shall be allowed to write and receive one letter upon his admission to the Adult Correctional Centre;

(b) Every inmate shall, during the period of his sentence, be allowed to write and receive one letter at intervals of not less than one month."

108. On the question of wiretapping, there are no legislative measures which deal with this matter. There is, however, a procedure which has developed as a matter of policy. An application to engage in wiretapping must be made by the Special Branch Division of the Police Force to the Attorney-General. Wiretapping is only authorized for suspected drug trafficking, violent crime and engagement in potential terrorism. The application must be supported by evidence which shows that the police have reasonable grounds for their belief that wiretapping is necessary. Authorization is for a limited period of time. Information on the number of persons whose phones have been wiretapped is given in a Ministry Paper tabled in the House of Representatives. The question of drafting legislation to deal with this matter is being examined by the relevant bodies.

Paragraph 2

109. Persons whose honour and reputation are unlawfully attacked are protected by the law relating to defamation which includes the Libel and Slander Act. A person who is defamed may bring an action against another who has defamed him. In addition the Libel and Slander Act provides:

"Section 5: If any person shall maliciously publish any defamatory libel, knowing the same to be false, every such person, being convicted thereof, shall be liable to be imprisoned for a term not exceeding two years, and to pay such fine as the court shall impose.

"Section 6: If any person shall maliciously publish any defamatory libel, every such person, being convicted thereof, shall be liable to fine or imprisonment or both, as the court may impose, such imprisonment not to exceed the term of one year."

Article 18

110. This article is concerned with freedom of conscience, thought and religion and bears some similarity to section 21 (1) and (6) of the Constitution which provides:

"(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance."

"(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required:

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion."

In practice, it may be said that there is every respect for the parent/guardian's right to choose the religious/moral education to be offered to his child, so long as no interference with others or no harm generally is done.

Article 19

111. The freedom to hold opinions without interference is guaranteed by section 22 of the Constitution. The provisions of paragraphs 1 and 2 of the article correspond with the provisions of section 22 (1) of the Constitution. Section 22 (2) is equivalent to paragraph 3. That section provides:

"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

(a) which is reasonably required:

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments ..."

Article 20

Paragraph 1

112. As regards this paragraph, section 3 of the Treason Felony Act provides:

> "If any person or persons whosoever, after the passing of this Act, shall, within this Island, compass, imagine, invent, devise, or intend to levy war, or excite insurrection against the Government of this Island, as by law established, in order by force or constraint to compel the Governor-General, Senate and House of Representatives or any of them, to consent to alter or change the constitution of this Island, as by law established, or in order to put any force or constraint upon, or to intimidate and overawe the Governor-General, Senate and House of Representatives or any of them, or to move or stir any foreigner or stranger with force to invade this Island, and shall express, utter, or declare, by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed, such compassing, imaginations, inventions, devices, or intentions, or any of them, every person so offending shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour."

Paragraph 2

113. As regards paragraph 2, such conduct would be prohibited by law relating to sedition. Sedition, which is an offence at common law, consists, inter alia, in conduct whether by word, deed or writing which directly tends to raise discontent and dissatisfaction among or promote ill-will between the citizens of Jamaica.

114. In addition, the Seditious Meetings Act allows the dispersal of meetings which have as their primary goal the commission of acts of sedition. This does not, however, prevent candid, full and free discussion of any public matter which is the right of every citizen unless the discussion takes place in circumstances calculated or intended to incite tumult, or statements made are an appeal to the passions of the hearers and an incitement to violence or outrage.

Article 21

115. This article recognizes the right to peaceful assembly, as does section 23 of the Constitution which provides:

> "(1) Except with his own consent, no persons shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

"(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provisions:

(a) which is reasonably required:

(i) in the interests of defence, public safety, public order, public morality or public health; or

(b) which imposes restrictions upon public officers, police officers or upon members of a defence force."

116. The right to join a political party is covered by this section. There is no legislation prohibiting political parties.

Article 22

117. This article gives the right to join trade unions and, like article 21, has an equivalent in section 23 of the Constitution. The restrictions on this right are to be found in section 23(2) of the Constitution and includes authorization of laws which impose restrictions on public officers, police officers and on members of a defence force.

118. As far as local legislation is concerned the Labour Relations and Industrial Disputes Act also gives one the right to join a trade union. Section 4 of that Act provides:

"(1) Every worker shall, as between himself and his employer, have the right:

(a) to be a member of such trade union as he may choose;

(b) to take part at any appropriate time, in the activities of any trade union of which he is a member."

Article 23

Paragraph 1

119. This principle is recognized by the laws of Jamaica.

Paragraph 2

120. This provision is reflected in section 24 of the Marriage Act.

Paragraph 3

121. Consent is an essential element for the validity of a marriage and the Matrimonial Causes Act, section 4(1)(c), makes the lack of consent a ground declaring a marriage to be void.

Paragraph 4

122. Legislation in Jamaica dealing with marriage and divorce does not make distinctions between men and women, nor do any particular consequences arise from the fact that a Jamaican man or woman marries a foreigner.

123. The only ground for divorce, as set out in the Matrimonial Causes Act, is irretrievable breakdown of the marriage as evidenced by the couple living separate and apart for a year. Matrimonial offences such as adultery are no longer relevant for divorce proceedings, nor is adultery otherwise punishable.

124. Custody matters are determined on the basis that the interest of the children is paramount. There are no guidelines which suggest a preference for one parent over the other. In divorce proceedings the court may decline to make a final decree of nullity unless it is satisfied that in relation to children under 18, satisfactory arrangements have been made for his care and upbringing (section 27(1) of the Matrimonial Causes Act).

Article 24

Paragraph 1

125. Every child has free access to health care in the public sector. The protection of the child begins with encouraging pregnant women to start antenatal care in the first trimester of pregnancy. This facilitates the early identification and management of risk factors. The giving of tetanus toxoid vaccine to the mother ensures passive immunity of the infant at birth and for some time after. Labour and delivery are mostly managed by trained personnel. All these measures help to decrease infant and child mortality. The momentum of immunization is monitored and maintained among all children up to age six in order to protect them from communicable diseases. Immunization regulations require all children entering primary school to be fully immunized prior to entry.

126. As regards the provisions of this paragraph, in Jamaica all rights granted to a minor are enjoyed without distinction as to race, colour, sex, language, religion or social origin, property or birth.

Paragraph 2

127. In Jamaica the relevant legislation is section 11(1) of the Registration (Births and Deaths) Act which provides:

> "Subject to the provisions of section 12 in the case of every child born alive after the coming into operation of this Act, it shall be the duty of the father and mother of the child, and in default of the father and mother of the occupier of the house in which to his knowledge the child is born, and of each person present at the birth, and of the person having charge of the child, to give to the Registrar, within 42 days next after such birth, information of the particulars required to be registered concerning such birth, and indicated in Form A of the First Schedule, and in the presence of the Registrar to sign the registration form and counterfoil."

128. Section 12 of that Act provides:

"(1) In the case of any child born alive in any public institution or in any private hospital it shall not be necessary for the person in charge of such institution or private hospital to attend personally before the Registrar to give information of the particulars required to be registered concerning such birth or to sign the registration form and counterfoil; but it shall be the duty of the chief resident officer of any such institution and of the person in charge of such private hospital within 14 days of the birth to send to the Registrar a certificate in the prescribed form giving the particulars required to be registered concerning such birth and thereupon the Registrar shall, if the birth has not been previously registered, register the same.

"(2) The parent or other person furnishing the particulars required to be registered shall subscribe his signature to the said particulars on the certificate provided under this section."

129. As regards the requirement that every child shall have a name, the Registration (Births and Deaths) Act does not state specifically that every child shall have a name. It is generally accepted, however, that the Act implies that every child shall have a name since section 11(1) provides that information of the particulars indicated in Form A of the First Schedule must be given to the Registrar. Among the particulars indicated in Form A of the First Schedule is "name of child".

130. It will be observed that the law of Jamaica is substantially in conformity with the provisions of this paragraph.

Paragraph 3

131. As regards this paragraph, sections of the Constitution are applicable:

(a) Section 5 of the Constitution as amended by the Citizenship (Constitution Amendment) Act 1993:

"Every person born in Jamaica after the fifth day of August 1962 shall become a citizen of Jamaica at the date of his birth. Provided that a person shall not become a citizen of Jamaica by virtue of this section if at the time of his birth:

(a) his father or mother possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to His Majesty in right of Her Government in Jamaica and neither of his parents is a citizen of Jamaica; or

(b) his father or mother is an enemy alien and the birth occurs in place then under occupation by the enemy;

(b) Section 6 of the Constitution provides:

"(1) A person born outside Jamaica after the fifth day of August 1962 shall become a citizen of Jamaica at the date of his birth if at that date his father is a citizen of Jamaica otherwise than by virtue of this section of subsection (2) of section 3 of this Constitution.

"(2) Subsection (1) shall not apply to any person who, before the first day of March 1993, was not entitled to Jamaican citizenship by virtue of the application of subsection (1) before the date.

"(3) Any person:

(a) who is born outside Jamaica after the fifth day of August 1962;

(b) who was not, before the first day of March 1993, entitled to Jamaican citizenship by virtue of any provision of this Constitution in force before that day; and

(c) whose father or mother is, at the date of the person's birth, a citizen of Jamaica other than by virtue of this section or subsection (2) of section 3 of this Constitution;

shall become a citizen of Jamaica with effect from the first day of March 1993, or the date of the person's birth, whichever is the later";

(c) Subsection 2 of section 3 provides:

"Every person who, having been born outside the former Colony of Jamaica, is on the fifth day of August 1962 a citizen of the United Kingdom and Colonies shall, if his father becomes or would but of his death have become a citizen of Jamaica in accordance with the provisions of subsection (1) of this section, become a citizen of Jamaica on the sixth day of August 1962".

132. The effect of these provisions is to grant Jamaican nationality to every child born in Jamaica, unless the parents are foreign diplomats or enemy aliens. Also, any child born outside of Jamaica is entitled to Jamaican citizenship if his mother or father or both parents are Jamaicans.

133. The Status of Children Act 1976 has removed the status of illegitimacy and, subject to certain situations, all children are treated alike. Exceptions lie in the areas of:

(a) Domicile, where the Act has not disturbed existing common law rules;

(b) Citizenship, where the child will take the nationality of the mother if the parents are unmarried;

(c) Adoption, determining relationship to other persons who have been adopted;

(d) Construction of the word "heir" or other expression used to create entailed interest in real or personal property;

(e) Dispositions made before November 1976, where previous law continues to operate, thus continuing the distinction.

Article 25

134. In Jamaica the right of every citizen to take part in the conduct of public affairs directly or through freely chosen representatives is well established. The position is the same in regard to the right of every citizen to vote and to be elected at elections which are free and fair, and which are held periodically. There is universal and equal suffrage and voting is conducted by secret ballot. It will be appreciated that there are qualifications as to age in respect of persons wishing to be elected to the House of Representatives and persons wishing to vote. Section 37 of the Constitution provides that a person shall not be qualified to be registered as an elector for election to the House of Representatives unless he has attained the prescribed age. The prescribed age is 18 years.

135. Every citizen has the right to access to public service on general terms of equality.

Article 26

136. The principle of "equality before the law" is one which is recognized in Jamaica. All persons are subject to the general law without discrimination on any of the grounds mentioned in this article. Section 24, which has already been quoted, provides for protection against discrimination on the grounds of race, place of origin, political opinions, colour or creed.

Article 27

137. As regards freedom to practise one's religion, section 21(1) of the Constitution provides:

> "Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance."

138. The combined effect of section 21 (Protection of freedom of conscience) and section 22 (Protection of freedom of expression) of the Constitution is to guarantee to all persons belonging to ethnic, linguistic or religious minorities the enjoyment of the rights mentioned in this article.

General comments

139. The enforcement provisions of the Constitution have been utilized. Examples of cases include:

Bell v. D.P.P. 1985 2 ALL E.R. 587;

Robinson v. R. 32 WIR 330;

Hinds v. R. 24 WIR 326;

Pratt and Morgan v. A.G. of Jamaica 1994 1 AC.

140. Over time the number of cases that have resorted to the Supreme Court for redress for alleged violations of constitutional rights has increased.

141. Under section 90 of the Constitution, the Governor-General is given discretion to grant to any person the prerogative of mercy as set out in that section. That section would allow the Governor-General and the Privy Council to implement the Committee's findings that a prisoner should be released, by pardoning him. The Privy Council does not have government representatives and the recommendations of the Governor-General are made independently of government influence.

142. The country has embarked on an exercise of constitutional reform. A Constitutional Commission consisting of representatives from the two main political parties and all the main social groups was appointed to receive communication from the public, inform the nation about the role of the Constitution and make recommendations to Parliament. The Commission has produced a report which will be tabled in Parliament. This report will form the basis of the exercise in constitutional reform. Important aspects of the report include provisions designed to strengthen the Bill of Rights provisions, ensure greater participation of the people in the parliamentary process and to reinforce the integrity of the electoral process.

143. It is anticipated that these reforms, when implemented, will result in a Constitution which provides even greater protection for the rights of its citizens in an ordered democratic society.

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